IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

FRIDAY, THE 23RD NOVEMBER 2007 / 2ND AGRAHAYANA 1929

OP.No. 34484 of 2001(E)

PETITIONER:

N.R. BALAN, HEADMASTER (RETIRED),
A.K.M.H.S, POYYA, IRINJALAKUDA,
THRISSUR, RESIDING AT "NUCHIYIL",
P.O. MALA, THRISSUR.

BY ADV. SRI.N.N.SUGUNAPALAN.

RESPONDENTS:
----

1. **DISTRICT EDUCATIONAL OFFICER,**
   IRINJALAKUDA.

2. **DIRECTOR OF PUBLIC INSTRUCTION,**
   THIRUVANANTHAPURAM.

3. **PRINCIPAL SECRETARY TO GOVERNMENT,**
   FINANCE DEPARTMENT, GOVT. OF KERALA,
   GOVT. SECRETARIAT, THIRUVANANTHAPURAM.

4. **STATE OF KERALA, REPRESENTED BY THE**
   CHIEF SECRETARY TO GOVERNMENT,
   GOVT. SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER MUHAMMED PUZHAKKARA.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 23/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 56384/2001 IN O.P. NO. 34484/2001-E

DISMISSED

23/11/2007. **SD/- KURIAN JOSEPH, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE PROCEEDINGS OF THE R.1. DTD. 16/05/1998.

EXT.P.2: COPY OF THE GOVT. ORDER DTD. 25/11/1998.

EXT.P.3: COPY OF THE ORDER DT. 17/07/2000 ISSUED BY THE R.2.

EXT.P.4: COPY OF THE REPRESENTATION DTD. 15/10/1999 SUBMITTED BY THE PETITIONER BEFORE THE R.3.

EXT.P.5: COPY OF THE COMMUNICATION DT. 30/06/2001 ISSUED BY THE R.3. TO THE PETITIONER.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

KURIAN JOSEPH, J.

O.P. NO. 34484 OF 2001

Dated this the 23rd day of November, 2007.

J U D G M E N T

Petitioner is aggrieved by Exhibit P5 communication issued by the Government. As per Exhibit P5, Exhibit P4 representation filed by the petitioner for an opportunity for re-option was rejected. Petitioner was granted the benefit of Headmaster (Higher Grade) with effect from 01.04.1998. Thereafter, notional re-fixation was made on 01.07.1998 granting the benefit of 1997 Pay Revision. If the option in the Headmaster's Higher Grade is made after the notional fixation on 01.07.1998, petitioner will not lose his one increment.

2. Petitioner retired only on 31.03.2000. Since the notional re-fixation for 1997 Pay Revision is made only on 01.07.1998, I find no justification in not granting an opportunity for re-option in the Headmaster's Higher Grade. There is no justification in denying one increment to the petitioner in case he is otherwise eligible to get the same. In ***State of Kerala vs. Lissy Joseph*** **(2005(4) KLT SN 70)**, this Court has already held that it is the date of effect of re-option and not the effect of

exercise of re-option that is material. There is no dispute that in cases where interests of justice require a chance for re-option to be given, in several cases pursuant to the directions issued by this Court, such chances have been given.

I quash Exhibit P5. There will be a direction to the respondents to permit the petitioner to re-opt the Headmaster's Higher Grade after the notional re-fixation of his pay as on 01.07.1998. This shall be done within a period of one month from the date of production of a copy of this judgment by the petitioner. The resultant benefits shall also be disbursed to him within a period of another two months and if not, the arrears will carry interest at the rate of 12% and the officers responsible for the delay shall be personally liable for the same.

This original petition is allowed.

KURIAN JOSEPH, JUDGE.

smp

KURIAN JOSEPH, J.

O.P. NO. 34484 OF 2001

J U D G M E N T

23.11.2007